

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE WACHOVIA CORPORATION
ERISA LITIGATION

MASTER FILE: 3:09-CV-00262-MR

THIS DOCUMENT RELATES TO:
All Actions

**UNOPPOSED MOTION TO APPROVE CORRECTIVE
ACTION OF A SETTLEMENT ADMINISTRATION ERROR**

Defendants in the above-captioned action respectfully submit this unopposed motion, seeking Court approval to rectify a recently discovered inadvertent error in the administration of the Settlement of this matter.¹

Background

Plaintiffs in this Action asserted claims for breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* Plaintiffs alleged, among other things, that the Wachovia Savings Plan and A.G. Edwards, Inc. Retirement and Profit Sharing Plan fiduciaries failed to prudently and loyally manage the Plans' investment in Wachovia stock. The Defendants included, among others, Wachovia Corporation and thirty individual

¹ Pursuant to Section 12.1 of the Settlement Agreement, the Court retained jurisdiction over all Parties to resolve issues concerning the administration of the Settlement Agreement. (*See* Docket 154-2.)

defendants.

On October 24, 2011, this Court issued a Final Order approving the class action settlement of this Action. (*See* Docket No. 175.) The Final Order was amended on November 3, 2011 to correct an inconsistency between the Final Order and Plan of Allocation. (*See* Docket No. 179.)

As part of the Settlement, a Qualified Settlement Fund was established consisting of \$12.35 million in cash consideration paid by Defendants. The Settlement Class consisted of all persons other than Defendants who were participants in or beneficiaries of the Wachovia Savings Plan at any time between May 8, 2006 and December 31, 2008 and whose Plan account included units of investments in Wachovia Corporation common stock and/or participants in or beneficiaries of the A.G. Edwards, Inc. Retirement and Profit Sharing Plan at any time between October 1, 2007 and December 31, 2008 and whose Plan account included units of investment in Wachovia Corporation common stock. The number of class members was approximately 160,000.

Settlement Administration Error

Wells Fargo & Company, the successor to Wachovia Corporation, recently discovered an error made in the administration and distribution of the Settlement Amount: the thirty individual defendants received a distribution from the Qualified Settlement Fund contrary to the terms of the Settlement Agreement. In

total, \$10,500.58 was erroneously distributed to the thirty individual defendants, *i.e.*, on average approximately \$350 per person.

Defendants' Proposed Corrective Action

Counsel for the Parties have met and conferred as to potential remedies to cure the settlement administration error. Given the *de minimus* amount involved and because it is not economical or efficient to distribute the amount to the Settlement Class according to the Plan of Allocation, Defendants proposed, and Class Counsel does not oppose, that Wells Fargo & Company make a donation payable to the North Carolina Interest on Lawyers Account with the funds to be split between the North Carolina State Bar and the Indigent Person's Attorneys Fund as directed by N.C.G.S. § 1-267.10. *See McDaniels v. Westlake Services, LLC*, 11-cv-1837, 2014 WL 556288, *10-11 (D. Md. Feb. 7, 2014) (approving legal aid organization as the *cy pres* recipient in connection with class action settlement).

Conclusion

For the reasons set forth above, the Defendants respectfully request (and Class Counsel does not oppose) that the Court approve the corrective action stated above, *i.e.*, that Wells Fargo & Company will make a donation in the amount of \$10,500.58 to North Carolina Interest on Lawyers Account.

This 14th day of April, 2015.

By: s/ Mark W. Merritt

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

s/Mark W. Merritt

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